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Supreme Court, U.S.
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No. 98-696

In The

Supreme Court of the United States

October Term, 1998

BEVERLY HORN,

Petitioner,

v.

BASSETT FURNITURE INDUSTRIES, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDINGS IN THE COURTS BELOW AND DISCLOSURE PURSUANT TO RULE 29

Beverly Horn is Petitioner. Respondent is Bassett Furniture Industries, Inc. Pursuant to Supreme Court Rule 29, Bassett Furniture Industries, Inc. refers this Court to pages ii-iii of its Brief of Appellee filed with the Court of Appeals for the Eighth Circuit (Corporate Disclosure Statement and Certificate of Interested Parties).

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STATEMENT OF THE CASE[1]

This case was brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5 *et seq.* ("Title VII"), 42 U.S.C. § 1981 ("Section 1981"), the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA"), and the Family and Medical Leave Act of 1993, 29 U.S.C.A. § 2601 *et seq.* ("FMLA"). Petitioner Horn asserted claims of race discrimination, and claims under the ADA and the FMLA. Respondent Bassett Furniture Industries, Inc. ("Bassett") moved for summary judgment on all of Horn's claims. The motion was granted by United States District Judge Susan Webber Wright, and judgment entered dismissing the case, on June 18, 1997. On June 26, 1998, the United States Court of Appeals for the Eighth Circuit affirmed, per curiam, by an order issued pursuant to Eighth Circuit Local Rule 47B, for the reasons stated in Judge Wright's Memorandum and Order. On July 28, 1998, the Court also denied Horn's petition for rehearing by the panel and suggestion for rehearing en banc.

Horn's employment with Bassett Horn first went to work for Bassett in August, 1993, in the cutting room of Bassett's Upholstery Plant No. 5 in Dumas, Arkansas. Her immediate supervisor was Katie Lemons, and Lemons's immediate supervisor was Jimmie Ross. Horn left her employment with Bassett for the first time several months later, in November, 1993.

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[1] Pursuant to Supreme Court Rule 15, Bassett's Statement of the Case corrects misstatements of fact set forth in the Petition.

Around May of 1994, Kathryn Peacock, the Personnel Manager at Bassett, saw Horn and encouraged her to return to work at Bassett. While Horn was visiting the plant in August 1994, Ross asked her if she was interested in coming back to work at Bassett. Ultimately, although Bassett was not trying to fill a vacancy, Bassett rehired Horn, and did so at a higher rate of pay than its new-hire rate.

Normal working hours in the cutting room where Horn worked are 7:00 a.m. to 3:30 p.m. However, it sometimes is necessary for employees to work overtime. Because of the nature of Bassett's business and overtime requirements, oftentimes it is not known until late during a particular shift that overtime will be required at the end of the shift. Applicants approved for positions in the cutting room are informed during the interview process that availability to work as many as 10 hours per day, 6 days per week is a requirement of the job. Horn knew of this requirement. In addition, Bassett's Employee Handbook, which Horn read when she began her employment with Bassett, provides that "[a]ll employees are expected to work the hours as scheduled in their department for their particular job." The cutting room began to work a substantial amount of overtime around the first part of September, 1995. Throughout September, Horn generally worked the same hours (including overtime) as other employees in the department.

Horn's second job and refusal to work overtime

Unbeknownst to Bassett, Horn obtained a job at Cotton Classing in Dumas around the first of October, 1995. Horn's shift at this second job began at 4:00 p.m. Thereafter she began to refuse to work overtime at Bassett. In

particular, she refused to work overtime as assigned on October 4, 9, and 10, 1995.

When questioned about her refusal to work overtime, Horn told Ross and Lemons that Horn's mother was keeping her children during the day and that, because her mother was "getting old," it was unfair for her mother to have to keep the children past 3:30 p.m. Lemons told Horn that she would have to get a baby-sitter and that she would have to start working the required overtime. Horn understood that Bassett needed her to work the overtime hours.

At least three times during her deposition in this case Horn changed her explanation of why she refused to work overtime. Horn initially stated that she left Bassett every day at 3:30 in order to pick up her children at her mother's house and to baby-sit the children, because she had no baby-sitter. Horn later testified that she could work only until 3:30 at Bassett because she was "stressed and pressured" by her job and that was "all [she] could bear." However, Horn ultimately admitted that *she refused to work overtime at Bassett so that she could go to her second job.* (Question: "[T]he fact is that you refused to work overtime at Bassett so that you could go to this job at Cotton Class[ing], didn't you?" Answer: "Yes.")

The Discipline Report On October 19, Ross and Lemons called Horn to the office to meet with her. During the October 19 meeting, Ross and Lemons issued Horn a Discipline Report, citing Horn on three different grounds: "Dependability – Excessive Absences/Tardies," "Attitude – Threats – Intimidate Other Employees," and "Stirring Up Trouble Among People Instead of Working." The

"Dependability – Excessive Absences/Tardies" notation had to do with Horn's refusal to work overtime as directed and needed by Bassett.[2] According to Lemons, the "Stirring Up Trouble" notation had to do with Lemons's perception that Horn acted disgruntled when Lemons talked to her. The "Attitude – Threats – Intimidate Other Employees" had to do with Horn making a remark to Ross and Lemons that Lemons was lucky that Horn did not stab Lemons with a pair of scissors.

Bassett maintains a policy requiring employees to acknowledge receipt of a Discipline Report by signing the report. Neither the Plant Manager, the Human Resources Manager, Horn's first-line supervisor, nor Horn's second-line supervisor are aware of *any* employee at Bassett's Dumas plant who, since the implementation of this policy, has received a Discipline Report and been allowed to return to work without signing the report. Horn, however, refused to sign the report.

Ross and Lemons explained to Horn that by signing the report she was not agreeing with the contents of the report, but merely was acknowledging that she had been presented with it. Ross and Lemons also explained to Horn that she could write her version of events on the report and that she could note on the report anything

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[2] While much of Horn's Petition focuses on Horn's attendance generally, the "Absences" portion of the disciplinary report was based on her absences on the days in October 1995 on which she refused to work overtime so she could attend her second job. Thus, Horn's references to earlier absences are both irrelevant and misleading, for the record indicates it was her refusal to work overtime in October that was the basis for the discipline report.

with which she did not agree. (There is a space on the report specifically for employees to use to write their version of events, any disagreement with the report, *etc.* The back of the report may also be used for this purpose.) Horn still refused to sign the report. Ross and Lemons then explained that if Horn did not sign the report she would be suspended for up to three days. They also explained that, after the three-day suspension, if Horn persisted in refusing to sign the report her employment would be terminated. Horn still refused to sign the report, and was thereafter suspended.

Horn returned after the three day suspension still unwilling to sign the report. This time, Horn spoke with Peacock. Peacock again explained to Horn that, by signing the report, Horn was not admitting that she was guilty of the conduct described therein but merely was acknowledging that she had been shown the report. Also, Peacock explained to Horn that Horn had the right to write her version of events on the report and to note specifically that she did not agree with the contents of the report. Horn still refused to sign the report. Horn admitted that prior to her separation of employment she was aware that she would not be allowed to return to work until she signed the report.

There is a dispute about what happened next. Horn states that she offered to sign the report if the notations about stirring up trouble and intimidation were removed. But Peacock and Ross also testified that Peacock offered to remove the "stirring up trouble" and "threats" notations from the report if Horn would agree to sign it with

those notations removed.[3] Horn still refused. Peacock offered to allow Horn to discuss the matter with other members of management. Horn declined. Peacock then spoke with Scottie Grimes, the plant manager. Grimes and Peacock agreed that Bassett had done all it reasonably could do to salvage Horn's employment. Peacock then told Horn that she was excused and that, because of her refusal to sign the report, Bassett would consider her to have quit her job.[4]

Horn's Charge and Complaint – Horn, represented by counsel, filed a Charge of Discrimination (hereinafter

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[3] Horn suggests that Bassett refused to strike certain notations in her disciplinary report, even though it prepared an alternative disciplinary report for another employee in an unrelated incident. First, whether Bassett refused to strike any of the notations in Horn's report is disputed – Bassett representatives testified that an offer was in fact made to Horn to strike a portion of her disciplinary report if she would sign it. Next, as the District Court held, the record demonstrates Bassett has been consistent with *all* employees and has not allowed *any* disciplined employee to return to work without first signing the disciplinary report. The record demonstrates that when the other employee referred to by Horn was presented with the disciplinary report, she left the Bassett plant and took the report with her. A new report was written to be presented to her in the event she ever returned (she did not). That employee was thus treated the same as Horn and every other Bassett employee who has received a disciplinary report. As the District Court concluded, Bassett applied its policies to all employees without regard to race.

[4] For ease of reference, this event is described herein as Horn's termination, even though that description is not an entirely accurate description of the end of her employment at Bassett.

"charge") with the Equal Employment Opportunity Commission (hereinafter "EEOC") on March 7, 1996. The text of Horn's charge reads as follows:

> I am a black female American citizen; and I am the mother of children who are disabled. On or about October 28, 1995, my employer fired me when a disturbance, in which I was not involved, arose in my work area between white and black employees. I was accused by my supervisors, Katie Lemons and Jimmie Ross, of stirring up trouble and was fired. I believe that I was fired because of my race. Also, I had been allowed excused absences to take care of my children. However, I was also told that I was being fired because I had missed too much time off caring for my children. I believe that I was fired due to disability and due to race. It is also my belief that my employer violated the Family and Medical Leave Act when I was terminated.

On May 22, 1996, the EEOC issued a pre-determination letter on Horn's charge. In that letter, the EEOC stated, *inter alia:*

> The evidence indicates that you were fired from your position for insubordination for refusing to acknowledge, through signature, a Disciplinary Report even though it was explained to you that your signature did not constitute a confession or admission to the allegations in the report. Further, you were told that the disciplinary report provided you protection as well since you had the opportunity to state your position and/or account of events on the disciplinary report.
>
> Also, there is no evidence of record to show that your Employer was aware that your children were disabled.

The EEOC also invited Horn to provide it with any further evidence in support of her charge, but Horn submitted nothing else. The EEOC then issued a determination on Horn's charge in which it stated that it was unable to conclude that Bassett had violated Title VII or the ADA.

REASONS TO DENY THE WRIT

Review on a writ of certiorari is a matter of this Court's discretion and not one of right. Pursuant to this Court's Rules, a petition will be granted only when there are special and important reasons for doing so, such as when a Court of Appeals decides an important federal question in a way that conflicts with another Court of Appeals, or when a Court of Appeals so far departs from the accepted and usual course of judicial proceedings, or sanctions such a departure by a lower court, that an exercise of the Supreme Court's supervisory power is called for. SUP. CT. R. 10. The questions presented in this case do not satisfy any of these criteria.

A. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE HORN HAS NOT ESTABLISHED THAT THE LOWER COURTS' DECISIONS CONCERN ISSUES OF NATIONAL IMPORTANCE.

The present case is a fact-driven "garden variety" employment discrimination case where a former employee has alleged numerous employment discrimination claims against her former employer, claims that were summarily dismissed by the trial court. The courts below

applied settled case law to an unremarkable fact pattern, a combination that does not offer fertile ground for resolving any issues of national interest. There are no facts present, or no new statement of law or construction of existing precedent that are of interest to anyone other than the present parties. The errors alleged throughout by Horn are claimed errors in fact-finding and in the misapplication of properly stated rules of law. Furthermore, because this case was disposed of by a summary judgment evaluating fact-specific claims, the unpublished opinion likely will be of little importance to the national body of law. This case simply does not provide this Court with a useful opportunity to address any issues of national importance, and thus does not provide any special and important reasons for granting certiorari.

B. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE HORN HAS NOT ESTABLISHED THAT THE LOWER COURTS HAVE SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER.

Petitioner notes that the court of appeals affirmed for the reasons stated in the district court's Memorandum and Order. She suggests that by affirming the district court pursuant to Eighth Circuit Local Rule 47B, the court of appeals did not conduct a *de novo* review of the summary judgment as required. But the method by which a court reviews a ruling below and reaches a judgment is different from how it communicates its ultimate decision.

The practice of affirming summary judgment orders pursuant to Local Rule 47B is far from being a substantial departure from accepted and usual judicial proceedings. In fact, a Westlaw search in the Eighth Circuit Court database for "47B and 'summary judgment' " found 628 results, demonstrating that it is not remarkable for the Eighth Circuit to dispose of appeals from summary judgments pursuant to Rule 47B. The argument that a court of appeals errs merely because it affirms a judgment for the reasons mentioned in the opinion of the court below, without more, is untenable.

Horn also suggests that the summary judgment order in this case came in disregard of the requirements imposed by Federal Rule of Civil Procedure 56, and cases construing the burdens thereunder. FED. R. CIV. P. 56; *e.g.*, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986); *Hillebrand v. M-Tron Indus., Inc.*, 827 F.2d 363, 365 (8th Cir. 1987), *cert. denied*, 488 U.S. 1104 (1989). She suggests that the lower courts did not decide many facts, and indulge reasonable inferences, in her favor. But the opinions below belie that contention. Consistent with *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), the lower courts adhered to their obligation to draw inferences favorable to Horn. The lower courts did so with respect to her allegations of Title VII racial discrimination ("Horn's allegations of harassment fall far short of the level of harassment required to state a Title VII violation, even assuming that all of the conclusory allegations Horn offers are true."); racially discriminatory discharge ("Even if this Court were to assume that Horn satisfactorily performed her job and therefore could

establish a *prima facie* case of racially discriminatory discharge, Bassett has articulated a legitimate nondiscriminatory reason for Horn's discharge."); her ADA claims (" . . . [A]ssuming the facts that Horn alleges are true Bassett did not terminate Horn based on a belief or unfounded assumption regarding Horn's having to miss work to care for disabled family members."); and her FMLA claim ("Assuming for the purpose of analysis that Horn can establish a *prima facie* case of retaliatory discharge under the FMLA, this Court determines that Bassett has proffered a legitimate, nondiscriminatory reason for terminating Horn."). These examples demonstrate that in granting and affirming the summary judgment, the lower courts consistently assumed that all facts alleged were true, but still concluded that Bassett was entitled to judgment as a matter of law. Horn's Petition does not show that the lower courts substantially departed from accepted practice in this regard because, regardless whether factual disputes are resolved in her favor, Bassett was still entitled to judgment as a matter of law.

Horn suggests that summary judgment standards must be applied with "added rigor" in employment discrimination cases, but makes no showing that the courts below departed from a higher standard. For example, any factual disputes about Horn's overtime attendance are rendered immaterial by the existence of a legitimate, nondiscriminatory basis for her termination – as the lower courts noted, even if Horn could establish *prima facie* cases on her various claims, she still could not prevail because Bassett offered a legitimate, nondiscriminatory basis for her termination. To avoid summary

judgment Horn was obligated to raise a fact issue whether the basis was pretextual. Her failure to do so does not render the summary judgment deficient, and certainly does not make the present case more worthy of review by this Court.

While employment discrimination cases may involve special burdens, *see McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), that fact does not demonstrate that summary judgment in this case was erroneous. The opinions of both the lower courts demonstrate adherence to the particular employment discrimination standards, and in no way demonstrate a substantial departure that must be corrected on writ of certiorari.

C. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE HORN HAS NOT ESTABLISHED THE EXISTENCE OF ANY CONFLICTS CREATED BY THE OPINIONS BELOW.

In her petition Horn alleges the existence of a conflict relative only to two points, namely, the issues relating to the scope of the EEOC charge and the hostile work environment claim. The questions presented to this Court do not demonstrate the existence of any such conflict between the opinions below and any other precedent from this Court or another court of appeals.

Scope of the EEOC charge Contrary to Horn's assertion, there is no conflict between the opinions of the lower courts and *EEOC v. Delight Wholesale Co.*, 973 F.2d 664 (8th Cir. 1992). The lower courts expressly followed the test used in *Delight* wherein the court held that an EEOC lawsuit "may extend to any discrimination like or

related to the substance of the allegation in the charge and which reasonably can be expected to grow out of it." *Delight*, 973 F.2d at 668.

The "like or related to" rule helps foster the policy underlying Title VII of achieving voluntary compliance through conciliation, so it is not surprising that the Eighth Circuit has held that "[a]llowing a complaint to encompass allegations outside the ambit of the predicate EEOC charge would circumscribe the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charge, as surely as would an initial failure to file a timely EEOC charge." *Williams v. Little Rock Mun. Water Works*, 21 F.3d 218, 222 (8th Cir. 1994) (quoting *Babrocky v. Jewell Food Co. & Retail Meat Cutters*, 773 F.2d 857, 863 (7th Cir. 1985); *see also Park v. Howard University*, 71 F.3d 904, 907-08 (D.C. Cir. 1995), *cert. denied*, 117 S. Ct. 57 (1996) (noting that even under the "like or related" test, a charge must allege conduct with sufficient specificity to allow for its investigation).

The *Delight* court explained that because the EEOC's investigation of a charge alleging discriminatory demotion uncovered evidence of constructive discharge and wage discrimination, the latter claims were like or related to the claim raised in the charge. But, as many cases have held, claims of discrimination in the terms and conditions of employment are conceptually distinct from claims of discrimination in the termination of employment. *See, e.g., Combs v. C.A.R.E., Inc.*, 617 F. Supp. 1011, 1012 (E.D. Ark. 1985); *Pickney v. American Dist. Tel. Co. of Ark.*, 568 F. Supp. 687, 691-92 (E.D. Ark. 1983). Horn admitted in this case that her EEOC charge only complains about her separation of employment. Therefore, the lower courts

did not act inconsistently with *Delight* in holding that the Title VII claim for racial discriminatory hostile work environment was not like or related to the claim in her charge. No conflict exists on the scope of the charge issue.

Hostile work environment The lower courts' disposition of Horn's hostile work environment claims brought either under Title VII or Section 1981 does not conflict with this Court's opinion in *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993), and in fact, is compelled by the test announced therein. While Horn suggests that *Harris* "does not require hostility to any particular degree for a claim to be actionable," Pet. at 17, clearly that is not the case. This Court noted in *Harris*: "Conduct that is not severe or pervasive enough to create objectively hostile or abusive work environment – an environment that a reasonable person would find hostile – is beyond Title VII's purview." 510 U.S. at 21.

The lower courts properly held that Horn could not establish a *prima facie* case for hostile environment racial harassment because, taking her allegations as fact, the record did not demonstrate facts that were "sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive work environment." The lower courts thus applied the precise test announced by this Court in *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986), and repeated in *Harris*, 510 U.S. at 21.

In summary, Horn has failed to establish that the decisions of the lower courts conflict with any previous decisions of the Supreme Court or other Courts of Appeals. First, the opinions of lower courts do not conflict with either *Delight* or *Harris*, but instead, merely

apply the same tests used therein to the particular facts of the present case. Second, a petition for writ of certiorari is rarely granted when the asserted error consists of the misapplication of a properly stated rule, as is the allegation made by Horn herein. Third, judgment as a matter of law was proper for Bassett because regardless of the factual complaints alleged by Horn, the lower courts held that Bassett had a legitimate, nondiscriminatory basis for her termination which Horn failed to refute.

D. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE HORN HAS NOT ESTABLISHED THE EXISTENCE OF ANY IMPORTANT FEDERAL QUESTION.

FMLA claim In regard to her FMLA claim, Horn states that this Court should grant certiorari because of the existence of an important federal question. However, Horn fails to state what important federal question is raised. And that is because no such federal question is present. At its essence, Horn's complaint under the FMLA is that the lower courts committed error in "overlooking" that she was not granted FMLA leave at a time when she was eligible to receive it, and that the discipline report interfered with her rights under the FMLA. Neither of these constitute important federal questions.

Supreme Court Rule 10 states that "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." SUP. CT. R. 10. While at most the error complained of by Horn constitutes an allegation of error in fact-finding, her allegations are not

supported by the record, and in fact no such errors exist. First, Horn alleges that Bassett admitted it never granted any family and medical leave during a time at which she was entitled to it. No such admission was ever made by Bassett and the record belies that alleged admission. Second, Horn stated that the disciplinary action interfered with her rights under the FMLA. But based on the record, the lower courts simply did not need to consider whether any such interference occurred. The lower courts held that even if on the record Horn could establish a *prima facie* case of retaliatory discharge contrary to the FMLA, Bassett was still entitled to judgment because it had proffered a legitimate, nondiscriminatory reason for terminating Horn, and Horn failed to offer sufficient evidence from which a rational finder of fact could conclude that Bassett's proffered reason was not the real reason and that instead the real reason was motivated by intentional discrimination.[5] Based on the record, this Court should not exercise its discretion to grant a writ of certiorari to review Horn's FMLA allegations.

ADA claim Horn apparently suggests the lower courts erred in relying on *Tyndall v. National Education Centers*, 31 F.3d 209 (4th Cir. 1994) to hold that there is no violation of the ADA if a non-disabled employee is disciplined for absences taken to care for a disabled family member, because such holding is contrary to congressional intent. *See* 42 U.S.C. § 12112(b)(4) (1994). Tyndall involved claims made by a terminated employee who was

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[5] It should be noted that her refusal to sign the report was not because of its discussion of any absences protected under the FMLA.

not disabled, but who missed work to take care of a disabled relative. The Fourth Circuit Court of Appeals held that Section 12112(b)(4) did not protect an employee who was not disabled but who missed work to care for a disabled family member. 31 F.3d at 214. Apparently, Horn now asserts that the propriety of the *Tyndall* holding is an important question of unsettled federal law.

The issue from *Tyndall* is neither unsettled nor controversial. The Tenth Circuit reached the same conclusion in *Den Hartog v. Wasatch Academy*, 129 F.3d 1076, 1082-83 (10th Cir. 1997), holding that the ADA does not apply to require an employer to restructure an employee's schedule so as to accommodate or enable the employee to take care of another person with a disability. The court compared the facts in *Tyndall* with the legislative history of Section 12112(b)(4) and explained that the fact situation in *Tyndell* "involved situations squarely anticipated by the 101st Congress." *Id.* at 1083. The court then detailed the various indicia of legislative intent found in committee reports and floor debates, and concluded that the ADA was not designed to protect a non-disabled employee who misses work to assist a disabled individual. *See id.* at 1082-83; *see also Ennis v. National Ass'n of Bus. & Educational Radio, Inc.*, 53 F.3d 55, 59-60 (4th Cir. 1995) (construing Section 12112(b)(4) as inapplicable to protect a non-disabled employee).

The congressional intent behind Section 12112(b)(4) is thus routinely and consistently followed by federal courts, leaving no important federal question of law to be resolved by this Court. And while Horn complains that the interpretation of Section 12112(b)(4) required by its legislative history means the FMLA proscribes conduct

not proscribed by the ADA, that fact should not be surprising – both acts would not be needed if they proscribed identical conduct. Certiorari is not needed to reconcile two statutes enacted to protect different interests that are not in conflict.

Basis for discharging Horn Horn's final argument is that both lower courts erred in finding that Bassett had a legitimate, nondiscriminatory reason for discharging her. She argues that the courts erred in holding that her termination was based on a legitimate, nondiscriminatory reason, because, according to Horn, the reasons for the discipline report that led to her termination were illegitimate. There is no basis for this argument, and, again, Horn fails to state a sufficient reason for this Court to grant her petition.

As noted earlier, Horn presented no facts below to raise an inference that her discipline was racially-based or in contravention of rights protected by the ADA or the FMLA. Bassett terminated Horn's employment for a legitimate, nondiscriminatory reason – because she refused to sign a Discipline Report. She was terminated pursuant to a uniformly-applied policy by the same person who, fourteen months earlier, hired her. Ultimately, Horn fails to identify any cases with which the lowers courts conflict on this point, or any important question of federal law, or any other special or unusual circumstances that are deserving of this Court's review. The record indicates Bassett had the right to discipline her, and when she refused to sign the report, to consider her terminated.

In summary, Horn has not established the existence of an important federal question that must be resolved by

this Court. No such question exists as to Horn's claims under the FMLA; instead, those claims amount to no more than complaints about how perceived factual disputes were resolved by the courts below, complaints that were in fact rendered moot by the finding of a legitimate, nondiscriminatory reason for her termination. Similarly, no important federal question exists concerning the congressional intent behind Section 12112(b)(4) of the ADA, as that intent has been demonstrated by legislative history detailed in various other opinions. Finally, no important federal question arises from the discussion below of Bassett's basis for disciplining Horn, because, as the facts in the record demonstrate, Horn was disciplined for a legitimate, nondiscriminatory reason which Horn failed to refute by offering sufficient admissible evidence that Bassett's proffered nondiscriminatory reason was pretextual and instead motivated by intentional discrimination.

CONCLUSION

Horn has failed to show grounds for certiorari to be granted on this matter. For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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